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case.

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**IN THE  
COURT OF APPEALS OF INDIANA**

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TODD HUTH,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 17A05-0511-CR-668
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE DEKALB SUPERIOR COURT  
The Honorable Kevin P. Wallace, Judge  
Cause No. 17D01-0403-FD-021  
17D01-0407-CM-539  
17D01-0407-CM-604  
17D01-0502-FD-023

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**SEPTEMBER 19, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**HOFFMAN, Senior Judge**

Defendant-Appellant Todd Huth (“Defendant”) appeals the trial court’s sentencing order after he entered into a plea agreement with the State. Defendant presents the following issue for our review on appeal which restated is: whether the trial court provided a sufficient sentencing statement while imposing a consecutive sentence.

The factual basis for Defendant’s plea to the matters before the trial court established that on February 29, 2004, while Defendant’s driving privileges were suspended due to Defendant’s status as a habitual traffic violator, Defendant operated a vehicle in DeKalb County. In that incident, Defendant’s vehicle collided with another vehicle resulting in personal injury to an occupant of the other vehicle. Defendant failed to stop following the collision. Defendant was charged with operating a vehicle while a habitual traffic violator and leaving the scene of a personal injury accident. The cause number for the February 29, 2004 violations was 17D01-0403-FD-21 (“Cause 1”).

On July 3, 2004, Defendant operated a vehicle while intoxicated, with a blood alcohol content of .09. Defendant was charged in that matter with operating a vehicle while intoxicated, a Class A misdemeanor. The cause number for the July 3, 2004 violation was 17D01-0407-CM-539 (“Cause 2”).

On July 26, 2004, Defendant drove a motor vehicle in DeKalb County knowing his license had been suspended administratively by an Allen County Court. Defendant was charged with driving while suspended, a Class A misdemeanor, for that offense. The cause number for that violation was 17D01-0502-FD-604 (“Cause 3”).

On February 7, 2005, Defendant operated a vehicle while knowing that his driving privileges had been suspended due to his status as a habitual traffic offender. Defendant was charged with that offense as a Class D felony. The cause number for that violation was 17D01-0502-FD-23 (“Cause 4”).

On July 8, 2005, Defendant submitted a plea agreement with the trial court in an effort to resolve five of the charges against him under the four cause numbers addressed above. Defendant agreed to plead guilty to all of the charges. The trial court accepted the factual basis for the plea on that date, and then took the matter under advisement.

On August 23, 2005, Defendant and the State submitted a modified plea agreement to the trial court, in which the parties agreed that Defendant was to plead guilty to the five charges, that the State would dismiss any other pending charges against Defendant, and would recommend a cap of eight years on the total executed portion of the sentences imposed in the four causes of action. On that date, the trial court held a sentencing hearing and entered its judgment and order of conviction, and sentenced Defendant.

In Cause 1, the trial court sentenced Defendant to a term of three years for Count I, and one year on Count II, to be served consecutively. In Cause 2, the trial court sentenced Defendant to a term of one year, to be served consecutively to the sentence imposed in Cause 1. In Cause 3, the trial court sentenced Defendant to a term of one year to be served consecutively to the sentence imposed in Cause 2. In Cause 4, the trial court sentenced Defendant to a term of three years, one year executed, and two years suspended, to be served consecutively to the sentence imposed in Cause 3. Defendant’s

aggregate sentence, therefore, was seven (7) years executed with two (2) years suspended, and two (2) years of probation. The trial court suspended Defendant's driving privileges for life.

In this appeal, Defendant does not challenge the portion of the trial court's sentencing order causing the sentences for Causes 2, 3, and 4 to be served consecutively. The trial court was required by statute to impose consecutive sentences. Ind. Code §35-50-1-2(d). Defendant does not challenge the trial court's decision to enhance the sentence for Cause 1. Instead, Defendant challenges the sufficiency of the trial court's sentencing statement as it pertains to the decision to run the sentences for Counts I and II of Cause 1 consecutively to each other.

A trial court's sentencing decision is reviewed for an abuse of discretion. *Plummer v. State*, 2006 WL 2088345, (Ind. Ct. App.) \*1. To impose consecutive sentences, a trial court must find at least one aggravating circumstance. *Id.* Furthermore, if a trial court imposes consecutive sentences when not required to do so by statute, the trial court must explain its reasons for selecting the sentence imposed, including: (1) the identification of all significant aggravating and mitigating circumstances; (2) the specific facts and reasons that lead the court to find the existence of each circumstance; and (3) an articulation demonstrating that the mitigating and aggravating circumstances have been evaluated and balanced in determining the sentence. *Id.*

Because findings to support consecutive sentences can be made by the court, the only question regarding the propriety of consecutive sentences is whether there were sufficient aggravating circumstances to support the decision to run the sentences

consecutively. *Id.* at \*2. In the present case, Defendant argues that while the trial court listed “copious aggravating facts,” the trial court failed to articulate that the aggravating and mitigating circumstances had been evaluated and balanced, and that consecutive sentencing was warranted. Reply Br. at 2.

The trial court stated in relevant part as follows regarding sentencing:

Well, uh, [Defendant] there’s nothing good to say about your criminal history, uh, with the possible exception of timing and, uh, maybe just dumb luck, you don’t have any felony convictions, at least up ‘til today. You do have at least twelve misdemeanor convictions. You have, by my count, six previous convictions of driving while suspended. Today’s your seventh. You have three previous convictions for operating while intoxicated. Today’s your fourth. . . Uh, I, you know, I, I guess we can only accept as, as true what people say, and [Defendant], if you say you’re sorry, if you say that, that you wish you could turn back the hands of time, I guess, you know, what else can we ask you to say. But I have to point out, if, if you were truly sorry, if, if driving, um, while suspended, um, causing an accident really made you feel sorry, then you would have stopped it in 1998. One of the, page two of the pre-sentence report, the Defendant was arrested on December 30, 1998 in Allen County, Court I, Operating While Suspended, a Class A Misdemeanor, Court II, Failure to Report an Accident, a Class A Misdemeanor. On March 3<sup>rd</sup>, 1999, the Defendant was convicted of those offenses. Ultimately, you were ordered to serve 60 days, apparently as part of the electronically-monitored program, and I’m not sure whether that was in jail or on work release, but that sounds eerily similar to what happened on February 29, 2004. I guess what I’m saying is this, if you’re truly sorry, and, and you regret your actions, then I guess I expect to see some modification of your behavior, and literally nothing modified your behavior until you were put in jail. . . I do believe there are enhancing or aggravating circumstances, the criminal history, the fact that you were out on bond when most of these offenses occurred, the fact that you violated probation in Allen County earlier by committing other criminal offenses. . . So, for the February ’04 incident, Mr. Cook and Ms. Thierjung, in that matter I’m going to sentence you [Defendant] for three years at the department of corrections for Operating a Vehicle While Being an Habitual Traffic Violator, that’s Count I, and for one year on Count II, Leaving the Scene of a Property Damage, of a Personal Injury Accident, excuse me. And I’m going to order that those two sentences be consecutive. So it’s three plus one, for a total of four. I’m going to order that those sentences be served in their entirety.

Tr. P. 67-68.

Defendant's argument fails. A trial court is not obligated to identify the aggravators that support consecutive sentences separately from the factors that support the sentence enhancement. *Smith v. State*, 770 N.E.2d 818, 821 (Ind. 2002). Rather, the same factors used to enhance a sentence may also be used to justify a consecutive sentence. *Id.* In order to impose consecutive sentences, a trial court must find at least one aggravating circumstance. *Cuyler v. State*, 798 N.E.2d 243, 246 (Ind. Ct. App. 2003). Defendant does not challenge the enhanced sentence imposed in Count I of Cause 1. Defendant agrees that the trial court listed copious aggravating circumstances at the sentencing hearing. Among the aggravating circumstances stated above are (1) Defendant's prior criminal history, (2) that Defendant was on probation in Allen County at the time the incidents occurred, and (3) that the events in Cause 1 were "eerily similar" to one of Defendant's prior convictions.

The trial court's statement in the present case illustrates that the trial court considered and balanced the aggravating and mitigating circumstances in Defendant's sentencing. Even though the trial court did not specifically state that the aggravators outweighed the mitigators, the record indicates that the court engaged in an evaluative process and determined that an enhanced, consecutive sentence was appropriate in Cause 1. *See Plummer*, 2006 WL 2088345 (Ind. App.) \*4. The trial court did not err.

Affirmed.

BAILEY, J., and VAIDIK, J., concur.